APPELLANT PRO SE:

RODNEY S. SEGETY
Greencastle, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

RODNEY S. SEGETY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0509-CV-432
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
David T. Ready, Magistrate
Cause No. 71C01-9207-RS-636

November 9, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Rodney Segety ("Segety") appeals from the St. Joseph Circuit Court's denial of his Motion for Dismissal of Child Support filed eleven years after the issuance of the child support order. Concluding that Segety's motion for dismissal was not filed within a reasonable time as required by Trial Rule 60(B), we affirm.

Facts and Procedural History

T.A. was born in August of 1987 in Dallas, Texas, to Susan Alessi ("Alessi"). According to Alessi's paternity affidavit, she was married to Robert Alessi Sr. at the time of T.A.'s birth. However, they had been separated for two and a half years. Alessi lived with Segety from June 1986 until February 1987, six months before T.A.'s birth. Alessi and T.A. later moved to Iowa where she initiated this proceeding.

On July 15, 1992, Alessi, represented by a Title IV-D prosecutor,[1] filed a petition for support under the Uniform Reciprocal Enforcement of Support Act ("URESA").[2] Segety was served with process on July 17, 1992. However, Segety failed to appear at the hearing on September 1, 1992. In his absence, the trial court proceeded with the hearing and entered a default judgment for Alessi, determining Segety as the father of T.A. The prosecuting attorney filed an information for contempt and rule to show cause on February 10, 1993. Segety again failed to appear at this hearing, and the trial court issued a body attachment. After the body attachment had expired, the prosecuting attorney filed another information for contempt and rule to show cause on March 15,

[1] Title IV-D is a reference to the Child Support Enforcement Program of the Federal Social Security Act. See 42 U.S.C. §§ 601- 680 (2006). Affiliation with that program requires a parent to assign to the state his or her right to collect support payments. See 42 U.S.C. § 608(a)(3) (2006). Thereby, the state becomes an active participant in proceedings to collect child support.

[2] We note that in 1997, the Indiana legislature enacted the Uniform Interstate Family Support Act ("UIFSA") to supersede the Uniform Reciprocal Enforcement of Support Act ("URESA"), which was in place at the time this support action was initiated. UIFSA is codified at Indiana Code sections 31-18-1-1 through 31-18-9-4.

1994. Segety once again failed to appear at the hearing held on April 19, 1994, and the trial court issued a second body attachment.

Finally, on July 28, 1994, Segety was produced by the sheriff pursuant to the body attachment and appeared in court. The trial court then ordered Segety to pay an arrearage of $3425 in support of T.A. and $55 per week in continuing support. The Title IV prosecutor again filed an information for contempt and rule to show cause on November 12, 2002. Segety once again failed to appear at the hearing held on January 2, 2003. The trial court issued a third body attachment, and Segety was again produced by the sheriff on January 30, 2003. At this time, the trial court determined that Segety owed an arrearage of $18,390. This hearing was to be continued on August 19, 2003, and the trial court informed Segety in person that he was ordered to appear. However, once again Segety did not appear, and the trial court issued a fourth body attachment. Segety appeared at the October 20, 2003 hearing, escorted by the sheriff.

On March 15, 2005, almost eleven years after the trial court issued the child support order, Segety filed a Motion for Dismissal of Child Support, contesting the paternity of T.A. The trial court denied his motion on August 22, 2005. Segety now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Segety contends that the child support order should be set aside as paternity was not determined through genetic testing, but rather was granted through a default judgment at the 1992 hearing. We restate Segety's argument as whether the trial court abused its

discretion in denying him relief from the order under Trial Rule 60(B)(8).[3] Trial Rule 60(B)(8) provides that a party may be relieved from a final judgment for any reason justifying relief other than the reasons set forth in other subsections of the rule.

In reviewing a trial court's determination of whether to grant a motion for relief from a judgment or order under Trial Rule 60(B), we do not reweigh the evidence. Beike v. Beike, 805 N.E.2d 1265, 1267 (Ind. Ct. App. 2004). Our review of the trial court's ruling is limited to determining whether the trial court abused its discretion. Rocca v. Rocca, 760 N.E.2d 677, 679 (Ind. Ct. App. 2002), trans. denied. A trial court abuses its discretion when the judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief. Id. A motion filed pursuant to subsections (7) and (8) of the rule must be filed within a reasonable time. Ind. Trial Rule 60(B). "The determination of what constitutes a reasonable time varies within the circumstances of each case. Relevant to the question of timeliness is prejudice to the party opposing the motion and the basis for the moving party's delay." Levin v. Levin, 645 N.E.2d 601, 604 (Ind. 1994) (citation omitted).

In determining whether Segety filed his motion within a reasonable time, we first address the issue of prejudice to the parties opposing the motion, which includes not only Alessi but also T.A. and the state from which Alessi received public assistance. Alessi was a Title IV recipient at the time she initiated this action, and therefore, assigned any

[3] Segety failed to file his motion within one year of the date when the child support order was issued. Therefore, he is precluded from asking the court for relief on the grounds of mistake, surprise, or excusable neglect under Trial Rule 60(B)(1), or fraud by the adverse party under Trial Rule 60(B)(3). Given the facts of this case, the only potential remedy available to Segety is found under Trial Rule 60(B)(8). We also note that in his reply brief, Segety argues that the paternity affidavit was filed outside of the statute of limitations. Because he raises this issue for the first time in his reply brief, it is waived. Ind. Appellate Rule 46(C) (2006) ("No new issues shall be raised in the reply brief."); see also Felsher v. State, 755 N.E.2d 589, 593 (Ind. 2001).

right she had to child support to the state where she resided. See 42 U.S.C. 608(a)(3) (2006); see also Appellant's App. p. 12. Alessi's state of residence has relied on this support order for more than a decade. The potential inability to enforce the eleven-year-old support obligation and collect unreimbursed public assistance certainly does result in prejudice to the state. Furthermore, T.A. is now nineteen years old. The trial court initially determined by default that Segety was his biological father at the hearing in 1992, at which time T.A. was only five years old. It would substantially prejudice T.A. now for the court to allow Segety to deny that he is T.A.'s father.

Second, we examine the basis for Segety's delay. Segety claims that his delay in seeking relief was due to his financial constraints and a disabling substance abuse problem. Br. of Appellant at 3. From the record, it appears that Segety failed to appear at multiple hearings, including the ones held on September 1, 1992; March 18, 1993 and April 19, 1994. The sheriff finally produced Segety pursuant to a body attachment on July 28, 1994, nearly two years after Alessi's original child support petition was filed. Since the date of that hearing, Segety again failed to appear in court several times, and more importantly, failed to challenge the support order in court until nearly eleven years later.

This record clearly shows that the court system afforded Segety more than sufficient time and opportunity to contest paternity, and the amount of coercion required to secure Segety's appearance in court merely confirms Segety's obvious desire to avoid his obligations to T.A. from the outset. Because he failed to appear and initially challenge paternity, he cannot now complain that equity requires the court to vacate the

support order. In Levin, our supreme court recognized that waiting five years after a dissolution of marriage to contest the support obligation for a child conceived by artificial insemination during the marriage was not a reasonable period of time as contemplated under Indiana Trial Rule 60(B). 645 N.E.2d at 604. Likewise, we find that Segety did not file his motion within a reasonable period of time and that he has presented no justifiable reason for his nearly eleven-year delay.[4] The trial court properly denied Segety's motion for relief.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.

[4] Because we conclude that his motion to vacate the child support order was not timely filed, we need not reach the merits of Segety's argument contesting paternity. Regardless, we note that our supreme court has stated that it "strongly discourages relitigation of support issues through T.R. 60(B)(8) motions in the absence of highly unusual evidence." Fairrow v. Fairrow, 559 N.E.2d 597, 600 (Ind. 1990). Segety appears to be asking the court to order genetic testing to set aside the paternity order. We have already held that such an action is outside the equitable discretion of the trial court. Nickels v. York (In re Paternity of T.M.Y.), 725 N.E.2d 997, 1005 (Ind. Ct. App. 2000) (citing Fairrow, 559 N.E.2d at 599).